

LOUISIANA PUBLIC DEFENDER BOARD

Monday, April 19, 2010
2:00 p.m.

LSU Law Center, Tucker Room, 3rd Fl.
Baton Rouge, Louisiana

Agenda

1. Call to Order and Welcoming Remarks by Chairman
2. Roll Call
3. Review and Approval of Minutes of March 15, 2010, Board Meeting* - **TAB 1**
4. Public Comments
5. Budget update
 - a. Projections – **TAB 2**
 - b. Report of the Budget Committee
 - i. Overhead
 - a. Multiple within district overhead payments
 - b. Resolution - January 1, 2007 salary and benefits* **TAB 3**
 - ii. Capital Contracts
 - c. District 28 Shortfalls – **Tab 5c**
6. Policy Committee Report
 - a. Draft Contract Announcement
7. Resolution – Adoption of LSBA's House of Delegates' Resolution, non-English speaking and limited English proficiency recommendation to the Louisiana Supreme Court* – **TAB 4**
8. Resolution - Mission Statement Adoption* **TAB 5**
9. Litigation (Executive Session)
 - a. 14th JDC
 - b. 6th JDC
10. SPD Report – **TAB 6**
11. Scheduling Next Two Board Meetings
 - a. Monday, May 17, 2010, LSU Law Center, Tucker Room, 2:00 p.m.
12. New Business

*Requires Board Approval

LOUISIANA PUBLIC DEFENDER BOARD

Minutes

April 19, 2010

Tucker Room

Louisiana State University School of Law

Baton Rouge, Louisiana

A meeting of the Louisiana Public Defender Board, pursuant to call of the Chairman and lawful notice, was duly convened and called to order by its Chairman at 2:10 p.m. on Monday, April 19, 2010, in the Tucker Room at Louisiana State University School of Law in Baton Rouge, Louisiana.

The following Board Members were present:

Frank Neuner, Chairman
James E. Boren
Judge Robert Burns
Cleveland Coon
Sam Dalton
Addison Goff
Frank Holthaus
Luceia LeDoux
Christine Lipsey
Pam Metzger
Lucy McGough
Majeeda Snead
Gina Womack

The following Board Members were absent:

Leo Hamilton
Rev. Dan Krutz

The following *ex officio* Board Member was present:

Rebecca Hudsmith

The following *ex officio* Board Member was absent:

Judge Robert Brinkman

The following members of the Board's staff were present:

Kristy Z. Boxberger, Juvenile Justice Compliance Officer
Marianne Buchanan, Budget Officer
John Di Giulio, Trial-Level Compliance Officer
Jean M. Faria, State Public Defender
Anne Gwin, Executive Assistant to State Public Defender
Roger Harris, General Counsel
Julie Kilborn, Deputy Public Defender – Director of Training
Dr. Erik Stilling, Information Technology and Management Officer

Clay Walker, Deputy Public Defender – Director of Juvenile Defender Services
Lynette Roberson, JIDAN Coordinator

1. **Reminders.** Mr. Neuner reminded Board members that Ethics Reports are due from members by May 15, 2010. Members should contact Roger Harris, Jean Faria, or Mr. Neuner if they need assistance.

Mr. Neuner also reminded Board members that the Board needs their emergency contact information, for use in case of a storm or evacuation. Members' private information will not be publicized except for the Board members-only section of the website.

2. **Review and Approval of Minutes of March 15, 2010 Board Meeting.** The Board reviewed the minutes of its meeting on March 15, 2010. Ms. LeDoux made the motion to accept the minutes. The motion was seconded by Ms. Womack and was approved without opposition.
3. **Calogero Justice Award from LBF Gala.** The LPDB Staff played a video presentation shown at the Louisiana Bar Foundation Gala on Friday, April 9, 2010. At the Gala, the Board was awarded the Calogero Justice Award for having the greatest impact on the justice system. Ms. Faria accepted the award on behalf of the Board at the Gala and presented the award to Mr. Neuner. Mr. Di Giulio remarked that Professor McGough also received the Professor of the Year Award at the Gala.
4. **Public Comments.** Mr. Neuner invited public comments. Tony Champagne asked that the times and dates of committee meetings be posted on the website.
5. **Budget Update.** Budget Officer Buchanan reported that, as of March 1, 2010, the Louisiana Public Defender Board has an undistributed balance of \$62,804.

Ms. Buchanan reported anticipated budget cuts. Budget cuts had been expected in the amount of \$854,082. Instead, the Legislative Budget Office advised Ms. Buchanan that the Board will be cut \$96,350 for remainder of the fiscal year.

Professor Metzger asked about the amount of the contract with the Innocence Project of New Orleans. Ms. Faria responded that the contract provided IPNO \$400,000 for post conviction work.

Mr. Boren asked about the \$5,000 expended for CLE. Ms. Faria responded that the current fiscal year is expected to be the last year for that expenditure.

a. Report of the Budget Committee.

- i. **Resolution – January 1, 2007 salary and benefits.** The Budget Committee presented the Board with a resolution to require each District Defender to provide the LPDB staff with the amount of annual salaries and benefits paid to them as of January 1, 2007, and to require each District Defender to provide the LPDB staff

with the amount of overhead in their private offices that was being supplemented with public funds, whether locally generated or from DAF, as of August 15, 2007. The Budget Committee moved for the Board to adopt the resolution. The motion was seconded by Professor Metzger and passed with no objections.

- ii. **Capital contracts.** Mr. Di Giulio met with all of the organizations that provide capital representation and asked them to submit budgets for next fiscal year. He will present proposed capital contracts for the Board's approval at the next Board meeting.
 - iii. **Multiple overhead payments within a single district.** The Budget Committee informed the Board about difficulty in reporting overhead costs. The Committee reported receiving multiple requests for overhead payments from some districts (from multiple contractors in the same district requesting such payments). The Committee had no resolution for policy adoption at this time but plans to present a resolution at the next Board meeting.
- b. **District 28 Shortfalls.** The Budget Committee recommended a distribution of \$100,000 to District 28 to address budget shortfalls. Ms. Buchanan provided information on the circumstances that created the need for this request for distribution to District 28, including a poorly furnished office inherited by the current District Defender. The District previously had a sparsely furnished building, out-dated equipment, and a need for more attorneys. The current District Defender, Derrick Carson, used reserve funds to purchase equipment and hire new attorneys. In Fiscal Year 2008-09, the District received \$128,900 in revenues but had \$194,441 in expenditures. From July 2009 to February 2010, the District had \$66,118 in revenues but had \$133,543 in expenditures, creating a shortfall of \$67,425 for that period. The estimated shortfall each month is \$8,428, creating an estimated shortfall of \$101,136 for the year. The District is currently down to \$4,841 in its cash reserves. The Budget Committee recommended the distribution to keep the district operating.

Ms. LeDoux reminded the Board that the Board policy is to require districts to use reserves when necessary so that such distributions will only restore the reserves to a balance proportional to that of other districts. This distribution would assist the district in operating, not to merely build its reserve funds.

Mr. Boren asked if this shortfall is expected to be recurring. Mr. Carson was present and informed the Board that the District had not been properly funded in the past because funding had not been requested. Mr. Carson explained that local revenues are down and explained steps that he is taking to address the problem within the district. Mr. Carson stated that the need for the distribution should be a one-time situation.

The Budget Committee moved for approval of the distribution. The motion was seconded by Professor Metzger and passed with no objections.

5. **Policy Committee Report.** Mr. Neuner announced the Policy Committee will meet next month at noon before the Board meeting.
 - a. **Draft Contract Announcement.** The Policy Committee presented a draft District Defender contract and moved that LPDB staff discuss the draft at the District Defender Advisory Committee meeting on May 6, 2010 at 2:00 p.m., for the purpose of receiving feedback and comments from District Defenders. The Committee stated that the LPDB staff will make recommendations for adoption or amendment at the next Board meeting, based on the feedback received. The draft contract will be posted on the LPDB website by April 21, 2010. Anyone with comments on the draft contract should contact Tony Champagne or Paul Marx to have their comments included in a single document to be given to staff. The Committee moved for approval to present the draft contract and discuss it at the DDAC meeting. Mr. Holthaus seconded the motion which passed with no objections.
 - b. **Contract Adoption.** Mr. Boren stressed the need for serious discussion about adoption of the District Defender contract. He suggested that a structure be created so that all comments could be heard, such as at the DDAC meeting, and to allow sufficient time to address the comments at the next Board meeting.
6. **Resolution – Adoption of LSBA’s House of Delegates’ Resolution, non-English speaking and limited English proficiency recommendation to the Louisiana Supreme Court.** Ms. Faria asked the Board to adopt a resolution recommending that the Louisiana Supreme Court adopt standards for assistance given to non- or limited-English speaking clients. The resolution is similar to one passed by the State Bar Association’s House of Delegates. Ms. Faria described this as a growing demographic among clients. Currently, there is no uniformity in support services, such as translation, provided to these clients. Ms. Faria asked the Board to add its support to the resolution because of its impact on our clients. Ms. LeDoux moved for the Board to adopt the resolution. The motion was seconded by Ms. Womack and passed with no objections.
7. **Resolution – Adoption of LPDB Mission Statement.** Mr. Neuner presented to the Board the recommended mission statement produced by the LPDB Staff. Ms. Faria remarked that the staff carefully created the mission statement to represent the work of the Board. Mr. Holthaus suggested that the mission statement include the statutory right to counsel, in addition to the constitutional right to counsel. Ms. Faria expressed support for the language as written. Professor McGough moved for the Board to adopt the mission statement as written. The motion was seconded by Judge Burns and passed with no objections.
8. **Litigation (Executive Session)**

Ms. LeDoux moved that the Board go into Executive Session to discuss the pending litigation in the 14th and 6th JDC’s. Professor Metzger seconded the motion, which passed without objection.

Following Executive Session, Mr. Neuner instructed LPDB staff to research whether it would be a conflict for the Attorney General to also represent the District Defender involved in the litigation in the 14th JDC.

9. **State Public Defender's Report.** Ms. Faria reported that the LPDB staff is carefully monitoring budget allocations from the Legislature. Ms. Faria also informed the Board that SB 176 (Thompson) would be considered in the Senate Judiciary B committee hearing on Tuesday, April 20, 2010. The bill would require one of the Governor's appointees to the Board to be from Public Service Commission District 5 in north Louisiana. Ms. Faria planned to inform the Senate Committee that there is currently a Board member from that PSC district (Mr. Goff) and that there has been representation from this area on the Board for a long time. Ms. Faria informed the Board of a similar bill filed by Rep. Rosalind Jones. Mr. Neuner commented that the Board has been sensitive to having geographical and other types of diversity on the Board. Ms. Faria extended an open invitation for comments about the makeup of the board where it is of concern to any Board member or member of the public.

Ms. Faria reported that the Board is still searching for a Capital Case Coordinator. Also, as of May 1, Special Projects Coordinator Heather Hall will transition to a part-time employee. At this time, the LPDB staff will not be growing, as the Division of Administration has frozen new hires. However, additional administrative staff, compliance officers, and budget auditors are needed. Ms. Faria hopes the Board will be able to expand its staff in the future. Judge Burns asked for information about the Criminal Justice Summit. Ms. Faria responded that the Louisiana State Bar Association's Right to Counsel Committee suggested that LSBA create a forum to discuss state criminal justice policy. Senator Lydia Jackson will be a speaker, and while the event is targeted to attorneys, it is open to the public. Topics will include the court system, prosecution, funding, diversion, and reclassification. The summit will be held on May 10, 2010 at the Capitol Hilton, from 9:00 a.m. to 4:00 p.m. and includes a working lunch. Other expected attendees include the Constitution Project's National Right to Counsel Committee, Chief Justice Fletcher and other authors of the "Justice Denied" report, and a panel featuring judges and public defenders. Ms. Faria remarked that indigent defense services are failing across the country because of inadequate funding. The summit is expected to be a forum for a candid discussion about how to address these problems. Pete Adams of the Louisiana District Attorney Association has also been invited to attend.

10. **Upcoming Meeting Dates.** The Board set meeting dates for Monday, May 17, 2010, 2:00 p.m., and Monday, June 14, 2010, 2:00 p.m., LSU Law Center, Tucker Room.
11. **Additional Business.** Professor Metzger raised the issue of a bill currently being considered regarding the state's law school clinics. SB 549 (Adley) would bar clinics from filing actions against the State if the action is not on behalf of a client, and the law would apply to any school that takes any public funds for any purpose. Professor Metzger expressed concern that the bill would limit a clinic's ability to assist indigent criminal defense and indigent

juvenile defense clients, such as where clinics were appointed as special masters on behalf of clients after Hurricane Katrina. She also expressed concern that the bill may make it out of committee, though there would be a viable constitutional challenge to it.

11. **Adjournment.** Professor Snead moved that the meeting be adjourned. Ms. LeDoux seconded the motion which was approved without opposition.

Guests Present:

Ken Rodenbeck	Vic Bradley	Bradley Dauzat
Paul Marx	Steve Thomas	Mike Courteau
Bob Noel	Reginald McIntyre	Jim Looney
Mike Mitchell	Richard Tompson	Alan Robert
Brett Brunson	Judy Pugh	Derrick Carson
Michael Bradley	Jason Chatagnier	Shea Smith
Debra Terrell	Franz Borghardt	Mitch Bergeron
Tony Champagne		

I HEREBY CERTIFY that the foregoing is a full, true and correct account of the proceedings of the Louisiana Public Defender Board, held on April 19, 2010, as approved by the Board on the 24th day of May, 2010.



FRANK X. NEUNER, JR.
CHAIRMAN